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INSPECTORS GENERAL
on INTEGRITY and EFFICIENCY



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Next Meeting:
July 14, 2009, 10 am
GPO

Carl Hayden Room

S. 139-Data Breach Notification Act

Senator Dianne Feinstein (D-CA) recently introduced S. 139, the "Data Breach Notification Act". This legislation would require that business entities and Federal agencies notify individuals of security breaches of personally identifiable information (PII).

In certain instances, S. 139 also requires Federal agencies to notify law enforcement of PII security breaches. Section 7(a) would, among other things, require Federal agencies to notify the United States Secret Service (USSS) that a security breach has occurred if: 1) the number of individuals affected exceeds 10,000; 2) the affected PII database contains more than 1,000,000 individuals; 3) the affected database is owned by the Federal Government; or 4) the PII is of individuals who are employees or contractors of the Federal Government involved in national security or law enforcement.

Section 7(b) tasks the USSS with notifying 1) the FBI, if the security breach involves espionage, foreign counterintelligence, national defense or foreign relations protected information; 2) the United States Postal Service, if the security breach involves mail fraud; and 3) the attorney general of each State affected by the security breach.

Because the legislation does not mention any coordination with, or notification to, Inspectors General of the Federal agencies affected, we surveyed the IG community on its views of S. 139. Our survey results showed that, out of 48 respondents, 98% indicated that IGs should be notified of their respective agency's security breaches. In addition, 92% of respondents noted that S. 139 should specifically state that OIGs should be notified of security breaches by their respective agencies. We are drafting a letter to the respective committees of jurisdiction to communicate the views of the IG community on S. 139.

S. 976-Paperwork Reduction Act Amendment

This legislation, introduced by Senator Charles Grassley (R-IA), would exempt from the Paperwork Reduction Act (PRA) information collected during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by a Federal Office of Inspector General. The Bill has been referred to the Senate Committee on Homeland Security and Governmental Affairs. We are working on setting up a meeting with staffers from the Senate Homeland Security and Governmental Affairs to discuss this amendment as well as another proposal to exempt IGs from the Computer Matching and Privacy Act.

S. 942-Government Charge Card Abuse Prevention Act of 2009

The IG community provided comments during the last session of Congress on the "Government Credit Card Abuse Prevention Act of 2008," S. 789. On April 30, Senator Grassley introduced S. 942, the "Government Charge Card Abuse Prevention Act of 2009", an updated version that incorporates significant changes made in response to our comments and comments by GAO and OMB. We received four additional comments on S. 942, which we will forward directly to appropriate committee staff.

H.R. 1507- Whistleblower Protection Enhancement Act of 2009

H.R. 1507 and S. 372, both titled the "Whistleblower Protection Enhancement Act of 2009", were recently circulated by OMB for comments. A number of IGs expressed interest in the IG community taking a position on certain H.R. 1507 provisions affecting IGs. In particular, Section 10 of H.R. 1507 requires IGs of covered agencies (the FBI and elements of the intelligence community) to investigate allegations of reprisal for whistleblowing by employees or former

employees of those covered agencies. In addition, if an employee or former employee of any Executive agency makes any disclosure of covered information that consists "in whole or in part of classified or sensitive information", that person shall be entitled to the same protection, rights, and remedies of Section 10. Therefore, Section 10 rights and remedies may apply to all Executive agency employees (and the respective IGs) depending on the type of information that is disclosed.

Section 11 amends the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 265) to enhance contractor employee whistleblower rights. It requires IGs to investigate, within a strict time frame of 180 days, complaints of contractor employees who disclose wrongdoing related to a contract or grant. We designed a brief survey to gauge the views of the IG community on these two H.R. 1507 provisions. We expect to have a draft letter on the IG views on H.R. 1507 by the final week of June.

Survey on Employee Cost Awards

Under 5 U.S.C. § 4512, Inspectors General of executive agencies may pay a cash award to any agency employee whose "disclosure of fraud, waste, or mismanagement" to the IG results in cost savings for the agency. The award is presently capped at the lesser of \$10,000 or an amount equal to 1% of the agency savings. Congressman Adam Putnam (R-FL) expressed an interest in increasing the award amounts under 5 U.S.C. § 4512. His office asked the CIGIE for additional data on this issue.

We surveyed whether IGs had made any cash awards to agency employees under 5 U.S.C. § 4512 in the last five years. Out of sixty-five IGs that responded, only four (5%) answered affirmatively. The maximum amount awarded to an agency employee was \$5,000. The maximum amount of agency savings was between \$500,000 to \$750,000. We also surveyed the reasons for not using the provision. Out of 34 IGs that responded, the prevailing reasons were:

- Agency employees have not come forward to make disclosures that lead to significant cost savings.
- Some IGs were not aware of the provision.
- Five Legislative Branch IGs and the Tennessee Valley Authority noted that 5 U.S.C. § 4512 does not apply to them.
- Budgetary constraints.

Out of the thirty-six IGs that responded to whether increasing the \$10,000 award limit to \$20,000 would encourage agency employees to report cost savings disclosures, the majority said the increase would have no or limited impact on encouraging employees to report instances of waste, fraud, or mismanagement. Some IGs provided suggestions on how to make this incentive program more effective:

- The majority expressed the need to better publicize and market the program to agency employees, while at the same time emphasizing that, under current ethical rules, it is incumbent upon employees to report waste, fraud, and abuse to the appropriate agency authorities (5 C.F.R. § 2635.101(b)(1)).
- Some IGs suggested that a central fund or account be established Government-wide to pay out the award so that OIG funding is not affected, especially those of smaller IGs.
- One IG suggested expanding the authority of the provision to cover employees whose disclosures resulted in significant investigative findings but no agency cost savings.

Proposed Amendments to the IG Reform Act, Program Fraud Civil Remedies Act (PFCRA) and Right to Financial Privacy Act (RFPA)

In its upcoming meeting, the Committee will consider several proposed law amendments. Glenn Harris coordinated the canvassing of proposed technical amendments to the IG Reform Act. The proposed amendments seek to accomplish the following:

1. Codify certain provisions from the Reform Act in the Inspector General Act of 1978;
2. Authorize all executive OIGs to fund or participate in CIGIE activities (the current language "department, agency, or entity of the executive branch" does not include certain designated Federal entities);
3. Replace "agency" with "Federal agency, establishment or designated Federal entity" so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints;
4. Clarify that reports OIGs must post on their websites include audit reports, inspection reports and evaluation reports, consistent with semi-annual reporting requirements;
5. Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites.

In addition, the Committee will consider proposed amendments to the PFCRA to update the upper dollar limit on PFCRA claims and penalties, allow agencies to retain PFCRA recoveries to the extent needed to make them whole, improve efficiency by allowing IGs to conduct PFCRA litigation, and permit greater delegation within the Department of Justice to authorize PFCRA claims. Finally, the Committee will consider an amendment to the RFPA that would give IGs the same exemption that grand jury subpoenas currently have so that an IG does not have to notify a target when a subpoena for financial records is issued.